

ESTTA Tracking number: **ESTTA650831**

Filing date: **01/20/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91216681
Party	Defendant Aseptia, Inc.
Correspondence Address	R BRIAN DROZD OLIFF PLC 201 S COLLEGE STREET, SUITE 2350 CHARLOTTE, NC 29209 UNITED STATES mdrozd@aseptia.com, bdrozd@gmail.com, bdrozd@oliff.com
Submission	Motion to Amend Application
Filer's Name	R. Brian Drozd
Filer's e-mail	bdrozd@oliff.com
Signature	/R. Brian Drozd/
Date	01/20/2015
Attachments	Motion to Amend Application.pdf(184514 bytes) SettlementAgreement.pdf(399089 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Mark: WRIGHT WAY

)	
Tyson Refrigerated Processed Meats, Inc.)	
)	
Plaintiff,)	
)	
v.)	Opposition No. 91216681
)	
Aseptia, Inc.)	
)	
Applicant.)	
)	

JOINT MOTION TO AMEND APPLICATION

In accordance with a written settlement agreement signed by the parties, Plaintiff (Tyson Refrigerated Processed Meats, Inc.) and Applicant (Aseptia, Inc.), jointly move, pursuant to 37 C.F.R. § 2.133, to amend the identification of goods/services set forth in Applicant's Trademark Application for WRIGHT WAY (Serial No. 85/849,875) (the "WRIGHT WAY Application") as described below.

1. The parties jointly request that the identification of goods/services in the WRIGHT WAY Application be amended to delete International Class 29 and the corresponding goods therefrom. The parties consented to the amendment of the identification of goods/services in the subject application, in writing, by execution of a Settlement Agreement (a copy of which is attached hereto). Accordingly, the amendment sought is proper under the rules and should be granted.

2. It is noted that, pursuant to the Settlement Agreement between the parties, within ten (10) days of receiving formal notice from the USPTO that the WRIGHT WAY Application has

been amended to delete International Class 29 and the corresponding goods therefrom, Plaintiff will move to dismiss the WRIGHT WAY Opposition without prejudice.

For at least the foregoing reasons, the parties request that the joint motion to amend Applicant's WRIGHT WAY Application be granted.

Dated: January 20, 2015

Respectfully submitted,

By: /R. Brian Drozd/
R. Brian Drozd
OLIFF, PLC
201 S. Tryon Street
Suite 1200
Charlotte, NC 28202
tel: 704-375-9249
Attorney for Applicant

CERTIFICATE OF SERVICE

On January 20, 2015, I served the foregoing JOINT MOTION TO AMEND APPLICATION, with the attached Settlement Agreement, on Plaintiff by email directed to:

Clifford C. Dougherty, III: cliff.dougherty@mcafeetaft.com

A copy was also automatically forwarded to counsel of record for Plaintiff by the Board's ESTTA electronically filing system.

Dated: January 20, 2015

By: /R. Brian Drozd/
R. Brian Drozd

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the "Agreement") is entered into on this 17th day of December, 2014 (to be the date of last execution hereof) (the "Effective Date"), by and between TYSON REFRIGERATED PROCESSED MEATS, INC., a Delaware corporation having a principal place of business in Springdale, Arkansas ("Tyson"), WRIGHT FOODS, INC., a North Carolina corporation having a principal place of business in Troy, North Carolina ("Wright Foods"), and ASEPTIA, INC., a North Carolina corporation having a principal place of business in Raleigh, North Carolina ("Aseptia").

1. Tyson is a manufacturer and marketer of food products in the United States and throughout the world. One of Tyson's primary brands in the United States is "WRIGHT," which is used to identify meat products, including pork and beef. Tyson and its predecessors in interest have continuously used the trademark "WRIGHT" in interstate commerce in the United States in association with meat since at least as early as August 14, 1964.

2. Tyson is the owner of the following incontestable United States trademark registrations for the mark WRIGHT and logos and designs including the same (collectively referred to as the "WRIGHT Mark"): U.S. Registration No. 1,554,890 (WRIGHT for pork products, namely, ham and bacon); and U.S. Registration No. 1,545,487 (WRIGHT BRAND SINCE 1922 & Design for pork food goods). Tyson also owns U.S. Registration No. 4,011,234 (SINCE 1922 WRIGHT BRAND & Design for pork) and U.S. Registration No. 4,422,819 (SINCE 1922 WRIGHT BRAND & Design for beef). Examples of various logos of Tyson that incorporate the WRIGHT Mark are shown by Exhibit A hereto.

3. Wright Foods is a food processing company in the United States focusing on shelf-stable food processing and customized food products for others.

4. Aseptia is the owner and registered agent of Wright Foods.

5. On February 14, 2013, Aseptia filed applications to register the marks WRIGHT WAY (Serial No. 85/849,875) (the “WRIGHT WAY Mark”) and WRIGHT FOODS (Serial No. 85/849,907) (the “WRIGHT FOODS Mark”) on the Principal register of the United States Patent and Trademark Office (the “USPTO”) for the following goods and services: processed foods, namely processed fruits, processed vegetables, broths, soups, and dairy products excluding ice cream, ice milk and frozen yogurt in International Class 29; and food processing in International Class 40. Aseptia’s application to register the WRIGHT WAY Mark (Serial No. 85/849,875) (the “WRIGHT WAY Application”) was published on February 4, 2014. Aseptia’s application to register the WRIGHT FOODS Mark (Serial No. 85/849,907) (the “WRIGHT FOODS Application”) issued as U.S. Registration No. 4,638,633 on November 11, 2014 (the “WRIGHT FOODS Registration”).

6. On June 3, 2014, Tyson filed a Notice of Opposition against the WRIGHT WAY Application asserting, for example, that contemporaneous use of WRIGHT WAY Mark and the WRIGHT Mark is likely to cause confusion and lead to deception as to the origin of the goods that are associated with the WRIGHT WAY Mark. The resulting opposition (the “WRIGHT WAY Opposition”) was assigned Opposition No. 91216681 by the Trademark Trial and Appeal Board (the “TTAB”) of the USPTO.

7. In an answer filed on July 28, 2014, Aseptia denied Tyson’s salient allegations in the WRIGHT WAY Opposition and affirmatively alleged that there is not a likelihood of confusion. The WRIGHT WAY Opposition is still pending.

8. In an Amendment to Allege Use filed in the WRIGHT FOODS Application on September 24, 2014, Aseptia deleted International Class 29 and the goods therein from the

WRIGHT FOODS Application. As a result, the goods/services identified in the WRIGHT FOODS Registration are limited to food processing in International Class 40.

9. The parties have now reached this Agreement to fully settle The WRIGHT WAY Opposition and related issues between them. The specific undertakings of the parties to this Agreement are set forth below.

NOW, THEREFORE, in consideration of the mutual terms and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

10. Wright Foods and Aseptia shall permanently refrain from using or seeking to register the WRIGHT WAY Mark, the WRIGHT FOODS Mark, and any other mark that includes the name WRIGHT or a derivative thereof as a trademark or brand for any food product, or as a service mark or trade name for food manufacturing or food processing services directed to beef, pork and poultry products.

11. Wright Foods and Aseptia shall permanently refrain from using or seeking to register the WRIGHT WAY Mark, the WRIGHT FOODS Mark, and any other mark that includes the name WRIGHT or a derivative thereof in the colors blue, red, brown, white and/or gold, or in connection with a logo similar to the logos shown by Exhibit A.

12. Within ten (10) days of the Effective Date, Aseptia shall take all necessary steps to request the USPTO to amend the WRIGHT WAY Application to delete International Class 29 and the corresponding goods therefrom.

13. Upon execution of this Agreement and within ten (10) days of receiving formal notice from the USPTO that the WRIGHT WAY Application has been amended to delete International Class 29 and the corresponding goods therefrom, Tyson shall dismiss the WRIGHT

WAY Opposition without prejudice. Aseptia shall provide its consent to dismissal of the WRIGHT WAY Opposition without prejudice.

14. Tyson hereby consents to use by Wright Foods and Aseptia of the marks WRIGHT WAY and WRIGHT FOODS as service marks and trade names for food manufacturing and food processing services for products other than beef, pork and poultry products. Tyson further hereby consents to registration by Aseptia of the WRIGHT WAY Mark and WRIGHT FOODS Mark for food processing in International Class 40.

15. Wright Foods and Aseptia each agree to promptly notify Tyson of any inquiries that have been made or are made in the future, and any events that have occurred or occur in the future, that suggest or imply that purchasers or potential purchasers of a food product manufactured or processed by Wright Foods or Aseptia may believe that such product is somehow affiliated with Tyson or Tyson's products identified by the WRIGHT Mark.

16. Wright Foods and Aseptia each agree not to challenge Tyson's use and registration of the WRIGHT Mark, or encourage or assist others in doing the same.

17. Tyson hereby releases and discharges each of Wright Foods and Aseptia together with its corporate affiliates, agents, attorneys, officers, directors and employees, from all claims, controversies, causes of action, damages and judgments in law, admiralty or equity, whether known or unknown at the time this Agreement is executed, arising from the beginning of time until the Effective Date and relating to the WRIGHT WAY Opposition or use by Wright Foods or Aseptia of the WRIGHT WAY Mark or the WRIGHT FOODS Mark.

18. Wright Foods and Aseptia each hereby release and discharge Tyson together with its corporate affiliates, agents, attorneys, officers, directors and employees from all claims, controversies, causes of action, damages and judgments in law, admiralty or equity, whether

known or unknown at the time this Agreement is executed, arising from the beginning of time until the date of this Agreement and relating to the WRIGHT WAY Opposition or use by Wright Foods or Aseptia of the WRIGHT WAY Mark or the WRIGHT FOODS Mark.

19. Each party to this Agreement represents that it has carefully read this Agreement and knows and understands the contents hereof, that it has signed this Agreement as its own free act without any duress, coercion, or undue influence by or on behalf of any other party, and that it has had the benefit of counsel of its own choice or has been afforded the opportunity to obtain counsel in connection with the negotiation and execution of this Agreement.

20. Nothing contained in this Agreement shall be construed to imply a joint venture, partnership, or principal-agent relationship between the parties.

21. The parties agree to promptly execute any documents reasonably requested and/or necessary to assure that the undertakings expressed herein are carried out and that this Agreement is otherwise fully implemented in all respects.

22. Each party represents and warrants that it has the duly authorized power and authority to enter into this Agreement and that the person signing this Agreement on its behalf has been properly authorized and empowered to enter into and execute the Agreement.

23. This Agreement may not be amended, modified, or altered unless such amendment, modification or alteration is in writing executed by both parties.

24. This Agreement constitutes the complete and final agreement and understanding between the parties and supersedes all prior and contemporaneous discussions, undertakings, and verbal agreements concerning the subject matter hereof.

25. The obligations and restraints imposed on the parties by this Agreement shall be separate and severable from each other and shall be deemed to be so notwithstanding that they

appear in the same paragraph or sentence as any other obligation or restraint or are imposed by the introduction of a word or phrase conjunctively or disjunctively with or alternatively to the other words or phrases. The language of all parts of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against either party. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining provisions shall not be affected thereby.

26. This Agreement shall be binding on and inure to the benefit of the parties, their corporate affiliates, and their respective successors and assigns.

27. This Agreement shall be governed by and construed in accordance with the federal laws of the United States and the laws of the State of Arkansas.

28. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the parties as of the month, day and year first above written.

TYSON REFRIGERATED PROCESSED MEATS,
INC.

By: Wesley Morris
Title: President Prepared Foods Manufacturing
Date: 1/7/15

WRIGHT FOODS, INC.

By: Michael Dyer
Title: CEO
Date: 12/17/14

ASEPTIA, INC.

By: Michael Dizon
Title: CTC
Date: 12/17/14

EXHIBIT A



